

BEFORE THE SPEECH AND HEARING SERVICES LICENSURE BOARD

STATE OF IDAHO

In the Matter of the License of:)	
)	Case No. SHS-2007-4
PHIL J. WYKLE,)	
License No. HA-190,)	STIPULATION AND
)	CONSENT ORDER
Respondent.)	
)	

SHSWykle\P7199lka

WHEREAS, information has been received by the Idaho Speech and Hearing Services Licensure Board (the "Board") that constitutes sufficient grounds for the initiation of an administrative action against Phil J. Wykle ("Respondent"); and

WHEREAS, the parties mutually agree to settle the matter in an expeditious manner in lieu of administrative hearings before the Board; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

A. Stipulated Facts and Law

A.1. The Board regulates the practice of hearing aid dealing and fitting in the State of Idaho in accordance with title 54, chapter 29, Idaho Code.

A.2. The Board has issued License No. HA-190 to Respondent. Respondent's license is subject to the provisions of title 54, chapter 29, Idaho Code and the Board's rules at IDAPA 24.23.01, *et seq.*

A.3. Respondent was licensed as a hearing aid dealer and fitter on November 8, 1985. Respondent's license expired on July 1, 2002, and Respondent did not renew the license. Respondent continued to practice and advertise as a hearing aid dealer and fitter after his license expired on July 1, 2002.

A.4. On August 9, 2006, Respondent entered into a contract with R.E. for two Sebo Tec hearing aids. A redacted copy of the contract is attached hereto as Exhibit A.

The contract failed to include the following information as required by Board Rule 600 (IDAPA 24.23.01.600):

- a. Respondent's license number (Board Rule 600.01.a);
- b. A notice to R.E. that R.E. had a nonwaivable 30-day right to cancel and obtain a refund (Board Rule 600.02);
- c. The address of the Bureau of Occupational Licenses and the procedure for filing complaints (Board Rule 600.02);
- d. A nonwaivable statement that the contract is null and void and unenforceable if the hearing aid is not delivered within 30 days of the date the contract is signed (Board Rule 600.03); and
- e. A statement that in the even the hearing aid is not delivered within 30 days of the date the contract is signed, Respondent would promptly refund any and all moneys paid for the purchase of the hearing aid (Board Rule 600.03).

A.5. On February 16, 2007, an investigator for the Bureau of Occupational Licenses found Respondent practicing hearing aid dealing and fitting without a license. Respondent was subsequently issued a citation by the Lewiston Police Department for operating a business without a license. A true and correct copy of Citation No. 106194 is attached hereto as Exhibit B.

A.6. On February 16, 2007, Respondent entered a plea of guilty to failing to renew a business license, and on March 16, 2007, a judgment was entered against Respondent. True and correct copies of Respondent's Plea of Guilty and the Judgment in Nez Perce County Case No. CR07-1340 are attached hereto as Exhibits C and D, respectively.

A.7. On February 27, 2007, Respondent renewed License No. HA-190.

A.8. The allegations of Paragraphs A.3 through A.7, if proven, would violate the laws and rules governing the practice of hearing aid dealing and fitting, specifically Idaho Code §§ 54-2904(1) and (4), 54-2906(2) and 54-2921, and IDAPA 24.23.01.600.a,

24.23.01.600.02, and 24.23.01.600.03. Violations of these laws and rules constitute grounds for discipline against Respondent's license to practice as a hearing aid dealer and fitter in the State of Idaho.

B. Waiver of Procedural Rights

I, Phil J. Wykle, by affixing my signature hereto, acknowledge that:

B.1. I have read, understand and admit the allegations pending before the Board, as stated in Section A, Paragraphs A.3 through A.7. I further understand that these allegations constitute cause for disciplinary action upon my license to practice hearing aid dealing and fitting in the State of Idaho.

B.2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to testify myself; the right to reconsideration of the Board's orders; the right to judicial review of the Board's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of hearing aid dealing and fitting in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this Stipulation as a resolution of the pending allegations.

B.3. I understand that in signing this Stipulation I am enabling the Board to impose disciplinary action upon my license without further process.

C. Stipulated Discipline

C.1. License No. HA-190 issued to Respondent Phil J. Wykle is hereby suspended for a period of three (3) months. During the three-month mandatory suspension period, Respondent shall not practice hearing aid dealing and fitting in the State of Idaho. The three-month mandatory suspension period shall commence seven (7) days from the date of service of the Board's Order.

C.2. Within thirty (30) days of the date of entry of the Board's Order, Respondent shall provide for Board approval a copy of a proposed contract that complies

with the Board's contract requirements as specified in Idaho Code § 54-2906 and Board Rule 600 (IDAPA 24.23.01.600)

C.3. Respondent shall pay to the Board an administrative fine in the amount of One Thousand and No/100 Dollars (\$1,000.00) within sixty (60) days of the entry of the Board's Order.

C.4. Respondent shall pay investigative costs and attorney fees in the amount of Nine Hundred Fifty and No/100 Dollars (\$950.00) within sixty (60) days of the entry of the Board's Order.

C.5. When the three-month suspension period ends, Respondent's License No. HA-190 shall be placed on probation for a period of two (2) years. The conditions of probation are as follows:

a. Respondent shall comply with all state, federal and local laws, rules and regulations governing the practice of hearing aid dealing and fitting in the State of Idaho.

b. Respondent shall inform the Board in writing of any change of place of practice or place of business within 15 days of such change.

c. If Respondent leaves Idaho for three (3) continuous months, or resides or practices outside of the state, Respondent must notify the Board in writing of the dates of departure, address of intended residence or place of business, and whether Respondent intends to return. Periods of time spent outside Idaho will not apply to satisfy this probationary period or excuse compliance with the terms of this Stipulation.

d. Respondent shall fully cooperate with the Board and its agents, and shall make all relevant files, records, correspondence or other documents available immediately upon the demand of any member of the Board and its agents.

C.6. When the two-year probationary period ends, and provided Respondent has complied with all other terms of this Stipulation, Respondent may request from the Board termination of the conditions of probation. Any request for termination of probation must

be accompanied by written proof of compliance with the terms of this Stipulation.

C.7. Respondent is solely responsible for all costs associated with complying with this Stipulation.

C.8. The violation of any of the terms of this Stipulation by Respondent may warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

D. Presentation of Stipulation to Board

D.1. The Board's prosecutor shall present this Stipulation to the Board with a recommendation for approval.

D.2. The Board may accept, modify with Respondent's approval, or reject this Stipulation. If the Board rejects the Stipulation, an administrative Complaint may be filed with the Board. Respondent waives any right Respondent may have to challenge the Board's impartiality to hear the allegations in the administrative Complaint based on the fact that the Board has considered and rejected this Stipulation. Respondent does not waive any other rights regarding challenges to Board members.

D.3. If the Board rejects this Stipulation then, except for Respondent's waiver set forth in Paragraph D.2., this Stipulation shall be regarded as null and void, and admissions in this Stipulation and negotiations preceding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing.

D.4. Except for Paragraph D.2. which becomes effective when Respondent signs this Stipulation, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

E. Violation of Stipulation and Consent Order

E.1. If Respondent violates this Stipulation and Consent Order, the violation shall be considered grounds for additional discipline and the Board may impose additional discipline pursuant to the following procedure:

- a. The Chief of the Bureau of Occupational Licenses shall schedule a

hearing before the Board to assess whether Respondent has violated this Stipulation and Consent Order. The Chief shall also serve notice of the hearing and charges to Respondent and to Respondent's attorney, if any. Within twenty-one (21) days after the notice of the hearing and charges is served, Respondent may submit a response to the allegations. If Respondent does not submit a timely response to the Board, the alleged violations will be deemed admitted.

b. At the hearing, the Board and Respondent may submit evidence and present oral argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated this Stipulation and Consent Order. At the hearing the facts and substantive matters related to the violations described in Section A shall not be at issue.

c. At the hearing, the Board may impose additional discipline, which may include the suspension or revocation of Respondent's license, the imposition of fines, the recovery of costs and attorney fees incurred by the Board and/or other conditions or limitations upon Respondent's practice.

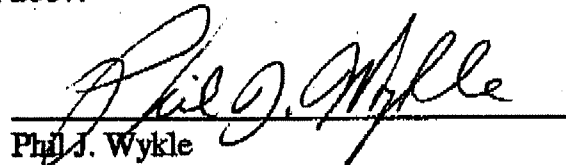
E.2. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

E.3. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above Stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I am waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this Stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms, and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take

effect and an order modifying the terms of the Stipulation will be issued. If the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.


DATED this 14 day of Aug, 2007.


Phil J. Wykle
Respondent

I recommend that the Board enter an Order based upon this Stipulation.

DATED this 16th day of August, 2007.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By 
Karl T. Klein
Deputy Attorney General

ORDER

Pursuant to Idaho Code § 54-2910, the foregoing is adopted as the decision of the Speech and Hearing Services Licensure Board in this matter and shall be effective on the 27th day of September, 2007. IT IS SO ORDERED.

IDAHO STATE SPEECH AND
HEARING SERVICES LICENSURE BOARD

By 
Andrew J. Seitz, Chair

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 27th day of September, 2007, I caused to be served a true and correct copy of the foregoing by the following method to:

Phil J. Wykle
HCR 75, Box 138
Kooskia, ID 83539

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail

Karl T. Klein
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail


Tana Cory, Chief
Bureau of Occupational Licenses

Wykle's Hearing Help

PURCHASE CONTRACT

PURCHASER R [REDACTED] E [REDACTED]

Address _____

City [REDACTED]

State Id

Zip _____

Phone [REDACTED]

Wykle's Hearing Help hereby sells and Purchaser(s) hereby purchase(s) and agrees to pay for, subject to the terms and conditions herein set forth, the following goods:

PARTICULARS FOR INSTRUMENT

Make <u>Selo Tec</u>	Model <u>510</u>	Serial No. <u>VQ5061TF240</u> <u>VQ 5061TF239</u>
Post Auricle <input type="checkbox"/>	All in Ear <input checked="" type="checkbox"/>	Body Type <input type="checkbox"/>
Left <input type="checkbox"/>	Right <input type="checkbox"/>	Eyeglass Type <input type="checkbox"/>
Trim _____		
Special Instructions for Fitting: _____		

GUARANTEE: The above described instrument is fully guaranteed against any technical or performance failure for one year. In addition, any failure within three years will be repaired for a fee of \$49.00. The purchaser hereby authorizes the hearing aid fitting and agrees to pay any balance due as set forth in this purchase agreement. Purchaser agrees to relinquish the above described instrument if required payment is not made within 30 days of specified due date.

The balance will be paid on delivery or in _____ monthly installments of _____ each. Payments will start _____

CASH SELLING PRICE OF AID 1900⁰⁰
PROFESSIONAL SERVICES No Charge
(testing, fitting & earmolds)

TOTAL
Second Aid. 1900⁰⁰

Sales Tax. None

TOTAL CASH BALANCE ..

Down Payment.

Finance Charge. None

TOTAL 3800⁰⁰

BUYER ACKNOWLEDGES that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid.

This must be signed in ink. Executed in triplicate.

this 9 day of 8, 1986 in the

presence of:

Wykle's Hearing Help

By _____

Authorized Representative

Grangeville - 622 W. North St.
983-0260

Orofino - 125 Johnson Ave.
476-7978

Kamiah - 304 Hill St.
935-0819

Phil Wykle - Residence
926-0177

Customer's Signature (in ink) R [REDACTED] E [REDACTED]

Spouse's Signature (in ink) _____

Exhibit A
Page 1 of 1

LEWISTON POLICE
IDAHO UNIFORM

VARIATION

106194

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCESTATE OF IDAHO
Vs.

Last name

First name

COMPLIANT AND SUMMONS

- ☐ Infraction Citation
OR
☒ Misdemeanor Citation
☐ Accident involved

IPC#

USDOT TX Census #

☐ Operator ☐ Class A ☐ Class B ☐ Class C ☒ Class D ☐ Other

☐ GVWR 29001+ ☐ 16+ Persons ☐ Pricard Hazardous Materials DR #

Home Address 7 mi / Harris Rd, Kootenai #

Business Address 210 Main Rd Phone #

THE UNDERSIGNED OFFICER (PARTY) HEREBY CERTIFIES AND SAYS:

I certify I have reasonable grounds, and believe the above named Defendant,

 DOB SS # WA 108304 H State ID Sex ☒ M ☐ F

Height 5-9 Wt. 150 Hair Bro Eyes Haz DOB 6-19-47

Veh. Lic. # State Yr. Of vehicle Make

Model Color

Did commit the following act(s) on 2-16-07 at 1200 o'clock P.M.

VIO. #1 operating a business license

VIO. #2

Location 210 Main Rd Lewiston, Nez Perce County, Idaho.

Officer / Party

Date 2-16-07 Officer/Party

Date 2-16-07 Officer/Party

Date 2-16-07 Officer/Party

THE STATE OF IDAHO TO THE ABOVE NAMED DEFENDANT

You are hereby summoned to appear before the Clerk of the Magistrate's Court in the District Court of Nez Perce County, located at 1230 Main Street, Lewiston, Idaho on or before:

3-2-07

Mon., Tues., Wed., Thurs., Fri. at / between 8:30-4:30

I acknowledge receipt of this summons and I promise to appear at the time indicated.

Defendant's Signature

I hereby certify service upon the defendant personally on:

Date

Officer

Serial #

NOTICE: See reverse side of your copy for PENALTY and COMPLIANCE instructions

COURT COPY

Exhibit B
Page 1 of 1

FILED

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

CLERK OF THE DIST. COURT

THE STATE OF IDAHO
Plaintiff,

DEPUTY

Case No. CR07-1340

vs.

Philip Wykle
Defendant.

PLEA OF GUILTY

1. Name: Philip Wykle
2. What schooling have you had? 5 yrs college Business Degree
3. Do you read and understand English? yes
4. Have you ever been treated for mental illness? No
5. Are you now under the influence of alcohol, drugs, or medication that affects your ability to understand and answer questions? No
6. What is the charge against you? failing to re-new Bus. Lic
7. What is the maximum sentence? ?
8. Do you realize that if you plead guilty, you give up or waive your rights to remain silent, have a jury trial, and confront witnesses? yes
9. Has anyone made threats or promises to get you to plead guilty? No
10. Do you understand that if you are now on parole or probation, your guilty plea may cause your parole or probation to be violated? N/A
11. Do you understand that the court does not have to follow recommendations made by your attorney or the State and you cannot change your mind about pleading guilty if recommendations are not followed? yes
12. Do you understand that if you plead guilty and you commit crimes in the future, this conviction would be considered in the future case and could cause a more severe penalty in the future case? yes
13. Is there anything that you do not understand? No
14. Do you admit you are guilty as charged? yes

DATE

2-16-07

SIGNED

Philip Wykle

EXHIBIT

C

Page

1

of

1

IDAHO UNIFORM CITATION COURT DOCKET

DATE

- ☐ Fixed fine paid by mail
☐ Defendant appeared -- first appearance
☐ Entered plea of admission or guilty
☐ Infraction: Plea of admission
☐ Misdemeanor: I plead guilty to the offense: PATTY O. WEEKS
☐ Paid fixed penalty or fine
☐ Sentenced by Court
☐ Advised of rights, entered plea of denial or not guilty
☐ Trial set for _____ ☐ Jury ☐ Jury Waived ☐ Jury N/A
☐ Bail set in amount \$ _____ (misdemeanor only)
☐ Continued until _____
☐ Warrant issued -- Reason: _____
☐ Default -- failed to appear on infraction
☐ Other action: _____

Second Judicial District Court, State of Idaho
In and For the County of Nez Perce

The State of Idaho, Plaintiff,
VS.

Philip Wykle

) JUDGMENT (VIOLATION #1)

) Case No: CR-2007-0001340

The defendant having been fully advised of his constitutional and statutory rights, including his right to be represented by counsel, and the defendant having:

- ☐ Been advised of right to court appointed counsel if indigent
☐ Been represented by counsel _____ (name)
☐ Waived counsel
☒ Entered a plea of admission or guilty
☐ Entered a plea of denial or not guilty, and has been
☐ Found to have committed the offense
☐ Found not to have committed the offense
☐ Failed to appear on an infraction -- default entered

NOW THEREFORE, Judgment is hereby entered:

- ☒ Against the defendant
☐ Defendant's driving privileges are suspended for _____ (days) (months)
☐ For the defendant
☐ Withheld judgment (misdemeanor only)

For the charge of the offense of In violation of section 118-6305 License-doing Business Without License
Prohibited on Citation No. 106194 Count 1

THE DEFENDANT IS HEREBY ORDERED, to pay the following fixed penalty or fine:
Penalty or fine \$ ~~5.00~~ 77.50 + 72.50 cost

Suspended _____ Probation Period _____
Conditions and supplemental orders _____

Dated: Friday, March 16, 2007

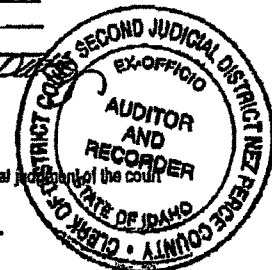
Pursuant to court order 2-16-07.

STATE OF IDAHO
COUNTY OF NEZPERCE

The undersigned Clerk of the above entitled court hereby certifies that the foregoing is a true and correct copy of the original judgment of the court
record on file in this office.

Dated: Friday, March 16, 2007 Clerk or Deputy

Signature of Judge or Clerk

Exhibit DPage 1 of 1